

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

WANDA S. THOMPSON and
DAVID E. THOMPSON

PLAINTIFFS

v.

Civil Action No. 1:00cv194-D-D

PATRICK HOME CENTER, INC.

DEFENDANT

OPINION

Before the court is the motion of the Defendant, Patrick Home Center, Inc., to dismiss and to compel arbitration of the claims in this cause of action. Upon due consideration, the court finds that the motion should be denied.

Factual Background

Pursuant to a purchase agreement dated May 1999, Plaintiff David Earl Thompson purchased a used 1991 Clayton mobile home from Patrick Home Center. Shortly after the Defendant delivered and set up the home, Wanda Thompson, after lighting the pilot light for the oven, opened the oven door and was severely burned on her left arm and leg by flames emanating from the inside of the oven. Plaintiffs filed the instant cause of action against Patrick Home Center alleging negligence and products liability, as well as negligence per se for selling the mobile home without complying with manufactured home safety standards in violation of 42 U.S.C. § 5409. David Thompson has asserted a claim for loss of consortium.

The Defendant contends that the above-referenced purchase agreement contains a “General Arbitration Provision” requiring the Plaintiffs to submit their claims to arbitration. Plaintiffs respond that the arbitration clause was signed only by David Thompson and, therefore, Wanda Thompson’s claims are not governed by the Federal Arbitration Act. Plaintiffs further contend that the arbitration clause is ambiguous and, therefore, not binding on David Thompson’s claims.

Legal Analysis

The Federal Arbitration Act, 9 U.S.C. § 1, et seq., provides that a written provision in a

contract evidencing a transaction involving commerce to settle by arbitration a controversy arising out of such contract or transaction is valid, irrevocable, and enforceable. 9 U.S.C. § 2 (1998). The Fifth Circuit has directed that courts are to perform a two-step inquiry to determine whether parties should be compelled to arbitrate a dispute. R.M. Perez & Assocs., Inc. v. Welch, 960 F.2d 534, 538 (5th Cir. 1992). First, the court must determine whether the parties agreed to arbitrate the dispute. Once the court finds that the parties agreed to arbitrate, it must consider whether any federal statute or policy renders the claims nonarbitrable. Id. A party seeking to avoid arbitration must allege and prove that the arbitration clause itself was a product of fraud, coercion, or such grounds as exist at law or in equity for the revocation of any contract. Reisfeld & Son Import Co. v. S.A. Eteco, 530 F.2d 679, 680-81 (5th Cir. 1976) (citing 9 U.S.C. § 2).

With respect to Wanda Thompson, the court finds no evidence of an agreement by her to arbitrate the subject dispute. Upon review of the purchase agreement and the arbitration clause incorporated therein, the only signature appearing on both the agreement and the arbitration provision is that of David Thompson. Thus, the court finds that the arbitration agreement is unenforceable against Wanda Thompson. Her claims are not subject to arbitration and shall be allowed to proceed to trial.

With respect to David Thompson, the court previously determined that his signature does appear on the purchase agreement and arbitration provision, indicating that he did agree to arbitrate his claims against the Defendant. Indeed, Plaintiff does not deny that he actually signed the arbitration agreement. Plaintiffs, however, allege that the arbitration clause is ambiguous, thereby precluding David Thompson and the Defendant from having an adequate meeting of the minds necessary to enforce the provision. The court finds this argument without merit.

The provision of the arbitration agreement Plaintiffs contend is ambiguous provides:

The parties agree that this Arbitration Provision insures to the benefit of, and is intended to be for the benefit of, any lender or mortgagee (or assigns) who provides financing for the purchase of the home which is the subject of the Contract, at the sole discretion of the lender or mortgagee. Nothing in this Contract requires a lender or mortgagee to invoke this Arbitration Provision, and the

lender or mortgagee may do so only if they agree to final and binding determination made by the arbitration process.

Plaintiff argues that the above clause appears to protect the rights of a lender or mortgagee who provides financing for the purchase and further seems to suggest that arbitration is not mandatory.

The question of whether ambiguity exists is a matter of law. Cunha v. Ward Foods, Inc., 804 F.2d 1418, 1428 (9th Cir. 1986). The court first finds no ambiguity in the first sentence of the above clause. It appears that the first sentence simply conveys the purpose of the arbitration agreement and includes no affirmative requirement for any party. The second sentence merely appears to make clear that a lender or mortgagee does not possess authority to invoke the arbitration agreement unless they have likewise agreed to be bound by a determination of the arbitrator. Indeed, it appears to the court that this provision provides mutuality in the agreement and prevents a lender from asserting unilateral control. The court is of the opinion that the arbitration provision is not ambiguous, but even if it were, the Federal Arbitration Act would require resolving any ambiguity in favor of arbitration.

Because the arbitration agreement appears unambiguous and is sufficiently broad to cover David Thompson's assertive claims, none of which include fraud or coercion, the court concludes that the Defendant has satisfied its burden of establishing that David Thompson's claim is arbitrable. This does end the court's inquiry however.

Rather than split the Plaintiffs' claims at this stage in the litigation, effectively allowing Wanda Thompson to proceed to trial while requiring David Thompson to proceed to arbitration, the court determines that in the interest of judicial economy and to avoid potentially inconsistent results, the claims of the Plaintiffs should be bifurcated at the trial of this cause. As noted above, David Thompson's claim is for loss of consortium. Under Mississippi law, a spouse's loss of consortium claim is derivative of the other spouse's claims. McCoy v. Colonial Baking Co., Inc., 572 So. 2d 850, 854 (Miss. 1990) (adopting the American Law Institute's recommended approach by declaring that the consortium claim should stand or fall with the injured person's

claim). Thus, the court determines that Wanda Thompson's claims shall be allowed to proceed to trial, and in the event a judgment is entered in her favor, then at that time David Thompson's claim may proceed to arbitration. Alternatively, in order to conserve judicial resources, the Defendant may elect to allow the jury to determine Thompson's loss of consortium claim. In the event a verdict is returned for the Defendant on Wanda Thompson's claims, then arbitration will be unnecessary.

Accordingly, the Defendant's motion to dismiss and to compel arbitration shall be denied as to Plaintiff Wanda Thompson. With respect to Plaintiff David Thompson, the Defendant's motion to dismiss shall be denied without prejudice to its right to re-petition the court to compel arbitration as further proceedings dictate.

Also pending before the court is the Defendant's motion to strike Plaintiffs' response to the motion to dismiss. The Defendant argues that the response was not timely filed and should be stricken. Pursuant to a telephonic communication with counsel for the Plaintiffs, the court granted Plaintiffs' *ore tenus* motion to file their response beyond the prescribed time limitation. Accordingly, the motion to strike is denied.

A separate order in accordance with this opinion shall issue this day.

This the ____ day of August 2000.

United States District Judge

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PATRICK HOME CENTER, INC.

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ORDER

Pursuant to an opinion issued this day, it is hereby ORDERED that:

- 1) the Defendant's Motion to Dismiss and to Compel Arbitration is DENIED as to Plaintiff Wanda Thompson;
- 2) Plaintiff Wanda Thompson's claims shall proceed to trial;
- 3) the Defendant's Motion to Dismiss and Compel Arbitration is DENIED without prejudice as to Plaintiff David Thompson; and
- 4) the Defendant's Motion to Strike is DENIED..

SO ORDERED, this the _____ day of August 2000.

United States District Judge